



# California Fair Political Practices Commission

November 16, 1988

Claude L. Biddle, Jr.  
Office of the County Counsel, Sierra County  
Post Office Drawer D  
Courthouse  
Downieville, CA 95936

Re: Your Request for Advice  
Our File No. A-88-403

Dear Mr. Biddle:

This is in response to your letter requesting advice on behalf of Supervisor Nevada "Babe" Lewis regarding her duties under the Political Reform Act (the "Act").<sup>1/</sup> It confirms the tentative decision conveyed to you during our telephone conversation on November 8, 1988.

## QUESTION<sup>2/</sup>

Does the trust established by Richard R. Lewis and Nevada Lewis (the "Lewis Trust") on January 25, 1984 meet the standards for a blind trust as outlined in Regulation 18235?

## CONCLUSION

The Lewis Trust does not meet the standards for a blind trust outlined in Regulation 18235. Therefore, a conflict of interest may exist if Supervisor Lewis participates in decisions which would significantly affect interests Supervisor Lewis holds through the trust.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> In accordance with our telephone conversation, I have not attempted to determine whether Supervisor Lewis has a conflict-of-interest if she participates or votes on matters relating to the specific property held by the Lewis Trust.

Claude L. Biddle, Jr.  
November 16, 1988  
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### FACTS

On January 25, 1984, Richard R. Lewis and Nevada Lewis established a revocable trust. On January 5, 1987, following her election to the Sierra County Board of Supervisors, Supervisor Lewis resigned as trustee of the Lewis Trust. She appointed her brother, William L. Ostrom to act as trustee, the appointment to be irrevocable until the expiration of her term as supervisor.

### ANALYSIS

Regulation 18235 (copy enclosed) permits a public official to place her interests in real property and other investments in a blind trust. She must continue to disclose these interests<sup>3/</sup> and the income generated by them until the trustee disposes of the interests and informs the public official of such disposition. The trustee must be given full discretion to manage the trust including the power to dispose of or acquire trust assets without consulting or notifying the public official. The trustee must be prohibited from notifying the public official of any assets acquired by the trust except the totals of the taxable items necessary for income tax purposes. Finally, the trustee must be a disinterested party other than the public official's relatives described in the regulation.

The Lewis Trust does not provide for such operation of the trust. In addition, Supervisor Lewis, upon her resignation as trustee, appointed her brother William L. Ostrom to act as trustee of The Lewis Trust. Subdivision (b)(1) of Regulation 18235 specifically prohibits the appointment of a public official's relative, such as her brother, to act as as trustee of a blind trust. Therefore, the Lewis Trust does not meet the standards of a blind trust outlined in Regulation 18235.

A trust which meets the standards of a blind trust provides the public official with a sort of exemption from disqualification due to conflicts of interest. In that case, the official has no knowledge or reason to know she has a financial interest in a decision. (Section 87100.) However, because the Lewis trust is not a blind trust for purposes of the Act, Supervisor Lewis may be required to disqualify herself

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<sup>3/</sup> She is also subject to disqualification as to these interests.

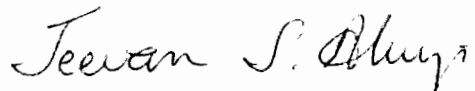
Claude L. Biddle, Jr.  
November 16, 1988  
Page -3-

from decisions which would foreseeably and materially affect the interests she holds through the trust. (Section 87103.)

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script, reading "Jeevan S. Ahuja".

By: Jeevan Ahuja  
Counsel, Legal Division

DMG:JA:ld

# SIERRA COUNTY

F P P C

Oct 17 1 34 PM '88



OFFICE OF THE COUNTY COUNSEL  
Post Office Drawer D  
Courthouse  
Downieville, California 95936  
Telephone: (916) 458-2883

October 14, 1988

Fair Political Practice Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Re: Request for Legal Opinion/Conflict of Interest  
County Supervisor Nevada "Babe" Lewis/R. R. Lewis Blind  
Trust

Gentlemen,

As County Counsel for the County of Sierra, I have been directed by the Sierra County Board of Supervisors, specifically Supervisor Nevada "Babe" Lewis, to request an opinion of the Commission on the following questions:

1. Does the Revocable Trust Agreement dated January 25, 1984 meet the standards for a blind trust as envisioned in Title 2 of the California Administrative Code, Section 18235.?

2. Does a conflict of interest exist due to Supervisor Lewis' interest in the trust if she participates or votes on any matters relating to the property which constitutes the trust interests?

On April 1, 1987, the law offices of Balfrey & Abbott, acting under contract to the County of Sierra as civil legal advisor rendered an opinion on the two questions and held that the revocable trust agreement did not qualify as a blind trust and that a conflict of interest would exist in any matter relating to the trust property. I am providing you with a copy of this opinion for your perusal.

Please find enclosed a copy of that certain document entitled "Revocable Trust Agreement Between Richard D. Lewis and Nevada Lewis of Sierra City, California, Settlers, and Richard R. Lewis and Nevada Lewis of Sierra City, California, Trustees." I am also enclosing a copy of the resignation of Mrs. Lewis as trustee from the trust. The resignation was executed on the eve of Mrs. Lewis's assuming the office of county supervisor.

Fair Political Practices Commission  
Request for Opinion/Conflict of Interest  
October 14, 1988

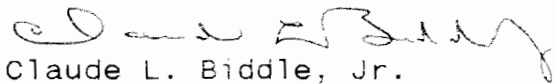
Page 2

May we have your opinion before the November 15, 1988 meeting of the County of Sierra Board of Supervisors?

If you have any further questions or need my assistance do not hesitate to ask.

Thanking you in advance for your courtesy and prompt attention to this request.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Claude L. Biddle, Jr.", with a stylized flourish at the end.

Claude L. Biddle, Jr.  
County Counsel

encls: 3

# SIERRA COUNTY

FPPC

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Claude L. Biddle, Jr.  
County Counsel

encls: 3

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Very truly yours,



Claude L. Biddle, Jr.  
County Counsel

encls: 3



# California Fair Political Practices Commission

October 24, 1988

Claude L. Biddle, Jr.  
Sierra County Counsel  
P.O. Box 813  
Colusa, CA 95932

Re: 88-403

Dear Mr. Biddle:

Your letter requesting advice under the Political Reform Act was received on October 17, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*  
Diane M. Griffiths  
General Counsel

DMG:plh

William L. Ostrom  
4500 E. Fremont St.  
Stockton, Calif. 95205

094069

88-403

# Trustee Lewis Family Trust Resignation

I, Nevada Lewis, Hereby declare that I am, at present, the Trustee for the Lewis Family Trust, dtd January 24, 1984.

Pursuant to my powers as Trustee as defined in the Trust Agreement, paragraph 32, and in anticipation of being sworn in as a duly elected supervisor, County of Sierra, State of California, I hereby resign as Trustee and name William L. Ostrom to act as Trustee. This appointment shall be irrevocable until the expiration of my term as Supervisor, December 31, 1990.

By furnishing a copy of this statement to each of the Department Heads within Sierra County, I am formally notifying them of this change and directing them to confine their questions and correspondence regarding all matters relating to the Lewis Family Trust, its businesses, or its properties to William L. Ostrom whose mailing address is 4500 E. Fremont Street, Stockton, California 95205.

094069

SIGNED THIS DATE

1-5 1986

NEVADA LEWIS

OFFICIAL RECORDS  
SIERRA COUNTY, CALIF.

Recording Requested By

Nevada Lewis

DATE 1-5-87 TIME 11:50

VOL. 119 PAGE 106

COUNTY RECORDER

FEE 25.00 DEPUTY Clara M. McIntire

STATE OF CALIFORNIA

COUNTY OF

SIERRA

ss.

On this 5<sup>th</sup> day of JANUARY, in the year 1987

LEONARD V. KINZLER, before me,

a Notary Public, State of California,

duly commissioned and sworn, personally appeared

NEVADA LEWIS

personally known to me (or proved to me on the basis of satisfactory evidence) to be

the person whose name is

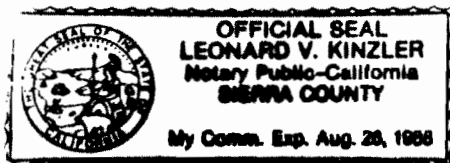
subscribed to this instrument, and acknowledged that she executed it.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal

in the DOWNIEVILLE County of

SIERRA on the date set forth above

in this certificate.



This document is only a general form which may be proper for use in simple transactions and in no way acts, or is intended to act, as a substitute for the advice on an attorney. The printer does not make any warranty, either express or implied as to the legal validity of any provision or the suitability of these forms in any specific transaction.

My commission expires

Notary Public, State of California

8-26-88

RECORDING REQUESTED BY

088275

AND WHEN RECORDED MAIL TO

*Jerry Johnson*  
*Y. & Jack Saw Graham*  
*4500 Ingraham St.*  
*Stockton,*  
*Calif. 95205*

## Durable Power of Attorney

### CALIFORNIA CIVIL CODE SECTIONS 2401 AND 2404 STATE:

**§2401:** All acts done by an Attorney-in-Fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his or her successors in interest as if the principal were competent.

**§2404:** As to acts undertaken in good faith reliance thereon, an affidavit executed by the Attorney-in-Fact under a power of attorney, durable or otherwise, stating that he or she did not have at the time of the exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time.

### ARTICLE I. DECLARATIONS

**1.1 THIS DURABLE POWER OF ATTORNEY SHALL NOT BE AFFECTED BY THE SUBSEQUENT INCAPACITY OF THE PRINCIPAL.**

This is a durable power of attorney under California law, Civil Code §2400 - 2407.

**1.2 EFFECTIVE DATE OF THIS POWER:**

*4-8-85*

**1.3 NAME AND ADDRESS OF PRINCIPAL:**

*Nevada Lewis*  
*P.O. Box 35*  
*Sierra City - Cal. 96125*

The pronouns I, Me, Mine, and Myself, refer to the Principal.

### 1.4 Appointment of Attorney-in-Fact

I appoint the following person or persons to be my attorney-in-fact, but I always have the power and right to substitute another Attorney-in-Fact or to revoke this appointment:

*William L. Catron*  
97

**APPOINTEE INCLUDES CO-APPOINTEES:**

If that appointee does not serve, then I appoint this person to serve instead:

*None*

COMPARED

166

The pronouns You, Your, and Yourself refer to the Attorney-in-Fact. When signing on my behalf under this Power of Attorney, use this form under California Civil Code §1095.

" (My Name) by (Your Signature), his/her Attorney-in-Fact."

#### 1.5 Delegation of Powers

I delegate to you the powers set forth in ARTICLE II. But, if I cross out or write through any part of this document and I put my initials opposite the cross-out or writing, then, I cancel that part in this document.

Your exercise of the delegated powers must be in a fiduciary capacity for my benefit and on my behalf.

At all times, California law governs this document. If any part of this document is not valid, all other parts shall remain valid.

You are not liable to me or to my successors when, in good faith, you act or do not act under this document. But, this freedom from liability does not apply if, as the result of your willful misconduct or gross negligence, you act or do not act.

The powers given you in this document will become effective as soon as I sign my name on page 4. They will continue despite any incapacity which may later befall me, provided you then comply with the conditions set forth in §1.6.

#### 1.6 Durable Power Starts

THE DURABLE POWER STARTS ONLY UNDER THIS PARAGRAPH. If any two of these three named persons or their successors deliver to you a dated, signed, and notarized statement that, in their opinion, (1) I am incapacitated, and (2) I cannot handle my affairs in a sensible and efficient manner, and (3) my interests would be best served by you acting as my Attorney-in-Fact under this Durable Power of Attorney, then, as of the date of their signed statement, you have the power to act as my Attorney-in-Fact. I have written the names of those persons below in my handwriting, but if any one or two of those named persons refuse, in writing, to act or are not able to act, then the remaining two or one may appoint successors or a successor to act under this paragraph.

1. William L. Castro
2. None
3. None

## ARTICLE II. DELEGATED POWERS

As to any assets (a) registered in my name, or (b) held for my benefit, or (c) acquired for my benefit, I give you these powers subject to §1.5.

- (1) As to any certificate of deposit, cash equivalents, bank checking, savings, or savings and loan account in my name or opened for my benefit — to open, withdraw from, deposit into, close it; and to negotiate, endorse, or transfer any instrument affecting those accounts or items.
- (2) As to any promissory note receivable, secured or unsecured — to collect, compromise, endorse, borrow against, hypothecate, release, or reconvey that note and any related deed of trust.
- (3) As to any shares of stock, treasury bills, treasury notes, bonds, or any documents or instruments defined as securities under California law — to open accounts with stock brokers, cash or on margin, buy, sell, endorse, transfer, hypothecate, or borrow against them, and to vote those shares, bonds, or securities for any purpose.
- (4) As to any real property or personal property — to collect rents, disburse funds, hire professional property managers, lease to tenants, negotiate and renew leases, borrow against, renew any loan, sell any of the property, and sign any documents needed to carry out the sale or to carry out any transaction referred to in this item (4).
- (5) As to any other asset not referred to in items (1), (2), (3) and (4) of this ARTICLE II — to buy, sell, hold, borrow against, or dispose of, as needed, in your judgment, for my welfare and comfort.
- (6) As to medical, surgical, or dental treatment and any health procedures you believe I need for my health and welfare — on my behalf to give or to withhold any medical, surgical or dental consent.
- (7) As to my income taxes and other taxes — to sign my name, hire preparers, advocates, lawyers, and advisors, and to pay for their services from my funds, and to do whatever is needed to protect my assets from diminution by taxes for the years 1975 through 2000, as though I could do those acts myself.
- (8) To buy in my name those U.S. Government bonds referred to as "Flower Bonds" that may be used to pay death taxes on my death.

- (9) To hire and to pay for from my funds the services of professional advisors, including a firm of which you are a member, without limitations: physicians, accountants, lawyers, and investment counselors, for my welfare.
- (10) To transfer to the Trustee of a revocable trust of which I am a Settlor (Trustor, or Grantor) and a beneficiary, my assets or my interests in assets, or to create a trust for my benefit, or the benefit of my spouse or my descendants, and to fund it with my assets or interests in assets.
- (11) To apply for government and insurance benefits, to prosecute and to defend legal actions, to arrange for transportation and travel. To partition community property, to create separate property for me, and to contract for medical and dental care for me; in so doing the foregoing, to sign my name and to represent me.
- (12) To sign and deliver a valid disclaimer under the Internal Revenue Code and the California Probate Code, when, in your judgment, my family's best interests would be served; to that end, to hire and to pay for legal and financial counsel to help you decide whether to file that disclaimer.
- (13) To borrow and to lend, secured or unsecured, for the purposes stated in this ARTICLE II, and to pledge any of my assets for that borrowing.
- (14) As to any sales or loans you make of my assets, to have the absolute and final discretion as to their terms.
- (15) To make gifts of my assets (or my interests in assets) from time-to-time, or at any time, subject to the following restrictions:
  - a). you may make ~~gifts~~ to my spouse provided you are not my spouse;
  - b). you may make gifts to my children and other descendants, except that if you are my child you may not include yourself among the donees unless my spouse (if any) and all of your siblings agree (or if you have no siblings, then if all my descendants agree);
  - c). you may make gifts in your judgment to charitable, scientific, religious or educational institutions according to my pattern of charitable giving over the past five (5) years;
  - d). whether or not you are my spouse, you may consent to split gifts made by my spouse to third persons;

- e). you may make payments to the providers of tuition or medical care (or both) of my descendants or spouse.
- (16) To sign and deliver a deed that changes my property interest from or to any of these designations: Joint Tenancy, Community Property, Tenants-in-Common, and Separate Property.
- (17) To make such decisions, sign on my behalf, or to take such action as is needed to accomplish the deferral of tax resulting from the marital deduction under the Internal Revenue Code.

### **ARTICLE III. POWERS YOU SHALL NOT HAVE**

#### **YOU SHALL NOT HAVE ANY POWER:**

- (1) To use my assets to pay for your legal obligations that include but are not limited to the support of your dependents.
- (2) To exercise any of the powers of the Trustee under an irrevocable trust of which you are Settlor (Trustor or Grantor) and of which I am Trustee.
- (3) To exercise any incident of ownership over any life insurance policy that I own and that insures your life.
- (4) To vote any proxy as defined in California Corporations Code §178.
- (5) To make a Will for me or a Codicil to my Will.
- (6) To revoke my Will or Codicil.

(continued on other side)

#### ARTICLE IV. MISCELLANEOUS

4.1 If I've appointed two persons to serve under this document, they must act together, and both must sign whenever necessary. But if one dies, resigns, or is unable to act because of incapacity, the other may act alone.

4.2 My heirs, successors, and assigns are bound by your acts under this document.

4.3 I recommend and urge you to confer with a California lawyer before you enter a transaction that under this Durable Power is not routine.

#### SIGNING

After my lawyer explained to me the importance of the powers I delegate to my Attorney-in-Fact in this document, I, the Principal, sign this Durable Power of Attorney on the date shown below my signature.

I understand (1) this document gives my Attorney-in-Fact serious powers over me and my assets; (2) the powers continue after I am disabled; and (3) I can revoke and cancel this document at any time.

PRINCIPAL'S NAME (printed) NEVADA LEWIS

SIGNATURE Nevada Lewis

DATED 4-8-85 at Stockton, California.  
Downieville

#### DECLARATION OF LAWYER FOR PRINCIPAL

I declare under penalty of perjury under the laws of California that the following is correct: (1) I am a lawyer licensed to practice in California; (2) I reviewed the above Durable Power of Attorney with the Principal before the Principal signed it; (3) the Principal communicated to me that (s)he wanted to give the uncanceled powers to the Attorney-in-Fact; and (4) I supervised the Principal's signing of the Durable Power of Attorney. DN

SIGNATURE [Signature]

Signed on Apr 05, 1985 at Stockton, California.

ADDRESS 1670 N. Carpenter Rd.  
Modesto, California  
95351

OFFICIAL RECORDS  
SIERRA COUNTY, CALIF.  
Recording Requested by  
Nevada Lewis

DATE 4-18-85 TIME 8:30

VOL 111 PAGE 166

BARBARA MARSHALL

COUNTY RECORDER

FEE 11.00

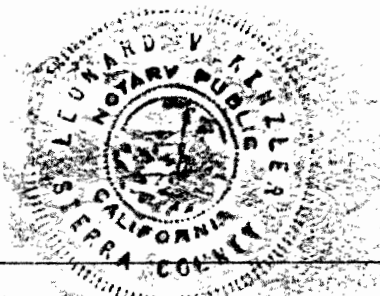
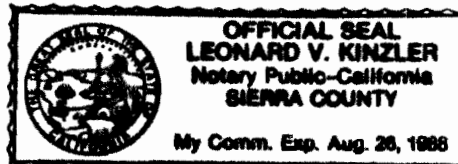
DEPUTY Jan Gallagher

STATE OF CALIFORNIA }  
COUNTY OF SAN JOAQUIN } SS.  
SIERRA

On this 8th day of April, in the  
year 1985, before me, Leonard V. Kinzler  
a Notary Public in and for said state, personally  
appeared Nevada Lewis  
personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person whose  
name is subscribed in this instrument, and acknowl-  
edged that (s)he executed it.

WITNESS my hand and official seal.

NOTARY PUBLIC [Signature]



088275

088275

## REVOCABLE TRUST AGREEMENT

BETWEEN

RICHARD R. LEWIS and NEVADA LEWIS

of Sierra City, California, SETTLORS,

AND

RICHARD R. LEWIS and NEVADA LEWIS

of Sierra City, California, TRUSTEES.

Settlors desire to establish a trust of the property described in Schedule A, attached hereto and by this reference made a part hereof. All such property and any other property held in the name of the trust or as hereafter added to the trust shall be known as the trust fund.

Trustee(s) acknowledge receipt of the trust fund and shall hold same in trust under the following terms, conditions, and provisions:

DEFINITIONS

Child, children or issue of any person shall mean those by adoption as well as by blood.

Whenever mention is made of Settlers in the plural or of a Settlor in the singular the same shall be deemed to refer to both RICHARD R. LEWIS and NEVADA LEWIS while they shall both be living, and to the survivor of them when only one of them shall be living. Unless otherwise specifically provided herein, either Settlor acting as Trustee shall have the full capacity, power and authority to deal with, manage, convey, encumber and otherwise dispose of trust property on his or her single signature even though both Settlers shall be living, and, upon the death of one of the Settlers, the surviving Settlor shall immediately become the sole Trustee of all trusts created hereunder and shall so act until the death, incapacity or voluntary withdrawal of said Settlor/Trustee. Immediately upon the death of the surviving Settlor/Trustee, the successor Trustee herein named shall, if not already acting as Trustee, immediately become the Trustee of this trust with full authority as such upon the recordation of notice in the county of residence of Settlers that said successor Trustee has succeeded to the Trusteeship as provided herein.

The term "Trustee" shall include both the singular and plural, masculine and feminine.



### DECLARATION OF TRUST

RICHARD R. LEWIS and NEVADA LEWIS, husband and wife, herein called "Settlors", "Trustees", "Spouse", and the like, declare this to be their Revocable Family Trust, and, while either or both are alive and capable, that they shall be the Trustees of same.

It is the Settlers' intention that all community, quasi-community and separate property transferred to this trust and the proceeds thereof (called the "community estate", "quasi-community estate" or the "separate estate", as applicable) shall continue to retain its character as community, quasi-community, or separate property during the lifetime of the Settlers, subject, however to all the terms and conditions of this instrument, and, further, subject to ownership by the trust while administered as trust property. Neither Settlor shall have rights over the community assets held by the trust greater than those afforded them by the laws of the State of California.

### DISTRIBUTION

1. All income required to be distributed shall be distributed in monthly or other convenient installments, and in any event at least once annually, to or for the benefit of the person or persons entitled to receive such income.

2. During the lifetime of the Settlers, the Trustee(s) shall pay to Settlers, or shall apply for Settlers' benefit, all of the income of the Trust, and so much of the principal of the Trust estate as the Settlers shall request orally or in writing.

3. If at any time, either in the Trustee(s)' discretion or as certified in writing by two licensed physicians, both Settlers, if both are then acting as Trustees, or either Settlor, if only one is acting as Trustee have become physically and/or mentally incapacitated, whether or not a court of competent jurisdiction has declared Settlers, or either of them, incompetent, mentally ill, or in need of a conservator, the Successor Trustee herein named shall immediately assume control and management of the trust estate, and shall pay to Settlor(s), or apply for their benefit, the amounts of income and principal necessary for the proper health, support, and maintenance of Settlers until the incapacitated Settlor(s), either in the Trustee's discretion, or as certified by two licensed physicians, is again able to manage his or her own affairs, or until the earlier death of said incapacitated Settlor(s). Income and principal from separate property so paid shall be held and administered as separate property by the recipient. Likewise, income from community property shall be held and administered as community property by the recipient.

4. Upon the death of the first Settlor to die, hereinafter referred

to as the "Deceased Spouse" or "Deceased Settlor", the Trustee shall divide the existing trust estate into four trusts, hereinafter called the "Survivor's Trust", the "Marital Trust", the "Contingency Trust" and the "Residual Trust", respectively, as follows:

(a) The Survivor's Trust shall consist of the Surviving Settlor's interest in his or her separate property together with his or her fractional interest in Settlor's community property.

(b) The Marital Trust shall consist of marital deduction property in that amount of the Deceased Settlor's separate and/or community property equal to the unlimited maximum estate tax marital deduction allowable under the provisions of Section 403 of the Economic Recovery Tax Act of 1981 in determining the Federal Estate tax imposed by Section 2001 of the Internal Revenue Code payable by reason of the death of the first Settlor to die, less the value of all property included in the Deceased Settlor's gross estate for Federal estate tax purposes which passes or shall have passed from the deceased Settlor to or for the benefit of the Surviving Settlor, either under any other provision of this Trust or in any manner outside this Trust, in such manner as to qualify for and be allowed as a marital deduction; provided, however, that if the amount so determined shall be greater than the amount required to reduce the estate tax payable by reason of the death of the first Settlor to die to zero after allowance against the estate tax of all available credits, such amount shall be reduced to the amount required to reduce the estate tax payable by reason of such death to zero after the allowance against the estate of all available credits.

(i) In making the computations necessary to determine such amount, the final determinations for Federal estate tax purposes shall control. Whenever used in this Article, the words "pass", "have passed", "gross estate" and "marital deduction" shall have the same meaning as such words have under the provisions of the Federal Internal Revenue Code applicable to a deceased Settlor's estate.

(ii) The Trustee is authorized to satisfy this bequest in cash or in kind, or partly in each, with assets valued according to the respective market values thereof at the date, or dates, of their distribution.

(iii) Only assets or the proceeds of assets which qualify for the marital deduction shall be used to satisfy the foregoing bequest. To the extent, also, that other assets qualifying for the marital deduction are available, such bequest shall not be satisfied by the distribution of: (a) assets in respect of which a credit for foreign death taxes paid is allowable under the Internal Revenue Code; or (b) assets which may be subject to both income and estate taxes and which may be eligible for a credit or deduction.

(iv) Subject to the foregoing, the decision of the Trustee as to the exercise of any election given the Trustee under the Internal Revenue Code shall be binding and conclusive on all persons, and no adjustment shall be made either between the marital deduction bequest made herein and the residuary estate, or between income and principal, by reason of any election made to claim certain administration and other expenses in the income tax return of an estate rather than the estate tax return, or by reason of any election to value a deceased Settlor's estate under the optional provisions of the Federal estate tax law.

(c) The Contingency trust shall consist of whatever fraction of the marital deduction amount the Surviving Settlor chooses to disclaim, and the Surviving Settlor shall have the right and authority to make a qualified disclaimer of any portion or all of the marital deduction amount that otherwise would pass to the Marital Trust under the applicable provisions of federal and state law. Said disclaimer, if so made, shall affect only the portion of said marital deduction amount so disclaimed and the disclaimed amount shall not be transferred to the Marital Trust but shall instead be set aside separately into the Contingency Trust.

(d) The Residual Trust shall consist of the balance of the estate.

5. All additions to the trust estate from the estate of a deceased Settlor shall be added to the Survivor's Trust, Marital Trust, Contingency Trust and Residual Trust as provided above.

6. If the Settlers die simultaneously, or under such circumstances that it is difficult or impossible to determine the order of death, the Settlers shall be presumed to have predeceased each other unless a different presumption would maximize the marital deduction, in which case that presumption shall control.

7. All death related expenses and taxes attributable to the death of the first Settlor to die including interest and penalties; funeral expenses; estate and inheritance taxes - except for taxes attributable to the Deceased Settlor as a "deemed transferor" pursuant to Section 2602(c)(5)(A) of the Internal Revenue Code and the regulations pertaining thereto, and except for additional taxes imposed under IRC 2032A; medical, hospital, ambulance and nursing/convalescent home expenses and legal/accounting expenses incurred in the administration of the deceased Settlor's estate including probate fees shall be paid from and charged to the Residual Trust or the probate estate of the Deceased Settlor, or prorated between the Residual Trust and said Probate estate in the discretion of the Trustee then acting and Settlor's named Executor(s). Provided, however, that death taxes shall be allocated and apportioned as further provided herein.

8. (a) From and after the death of the first Settlor to die, the Trustee shall pay all of the income of the Survivor's Trust to the Surviving Settlor in monthly or other convenient installments, together with such amounts of principal as the Surviving Settlor may request at any time. All of the income of the Survivor's Trust shall be distributed within each calendar year.

(b) From and after the death of the first Settlor to die, the Trustee shall pay all of the income of the Marital Trust to or for the benefit of the Surviving Settlor in monthly or other convenient installments. In addition, the Trustee may distribute such amounts of principal from the Marital Trust as the Trustee deems necessary for the health, education and support of the Surviving Settlor. The Trustee of this Trust is hereby authorized to make or not make the election provided by section 2056(b)(7)(B)(v) of the Internal Revenue Code to treat all or a specific portion of the Marital Trust as qualified terminable interest property for the purpose of qualifying all or a specific portion of the trust for the federal estate tax marital deduction, recognizing that, if my Trustee does not make such an election, the Marital Trust will not qualify for such marital deduction. The decision to make or not make said election shall be solely within the discretion of the trustee even though the overall tax rate after the death of both Settlers may be increased by the Trustee's election or failure to elect.

(c) From and after the death of the first Settlor to die, the Special Trustee shall pay all of the income of the Contingency Trust to or for the benefit of the Surviving Settlor in monthly or other convenient installments. In addition, the Special Trustee may distribute such amounts of principal from the Contingency Trust as the Special Trustee deems necessary for the health, education and support of the Surviving Settlor. Settlers hereby appoint ALEC OSTROM, HOMER OSTROM and FREDERICK OSTROM, as the Special Co-Trustees of the Contingency Trust, whose powers shall be limited to the management and distribution of the assets allocated to the Contingency Trust under the terms and conditions of this trust agreement. If either ALEC OSTROM, HOMER OSTROM or FREDERICK OSTROM shall for any reason be unable or unwilling to serve as Special Co-Trustee, then the others shall act as Special Co-Trustees. If no assets are allocated to the Contingency Trust, then the Special Trustee shall not be appointed and shall not serve in any capacity hereunder.

(d) From and after the death of the first Settlor to die, the Trustee shall pay all of the income of the Residual Trust to or for the benefit of the Surviving Settlor in monthly or other convenient installments. In addition, the Trustee may distribute such amounts of principal from the Residual Trust as the Trustee deems necessary for the health, education and support of the Surviving Settlor.

(e) On the death of the Surviving Settlor, the Trustee may, in the Trustee's discretion, pay out of the principal of the Survivor's

Trust or if it has been exhausted, out of the Residual Trust, the Surviving Settlor's last illness and funeral expenses, attorneys' fees, other costs incurred in administering the Surviving Settlor's probate estate, and estate and inheritance taxes, including interest and penalties arising as a result of the death of the Surviving Settlor, except for taxes attributable to the Surviving Settlor as a "deemed transferor" pursuant to Section 2602(c)(5)(A) of the Internal Revenue Code and the regulations pertaining thereto, and except for additional taxes imposed under IRC 2032A.

(f) Notwithstanding anything to the contrary set forth herein, the Trustee shall not be required on the date of death of either Settlor to immediately divide the trust estate into separate trusts as provided above, or to make any immediate distributions of principal hereunder; the Trustee may postpone division or principle distribution (1) for a period not to exceed six (6) months in order to establish an alternative valuation date under Section 2032 of the Internal Revenue Code of 1954, as amended, or (2) until such time as all obligations of the Trustee relating to the payment of funeral and last illness expenses and death taxes are determined and paid or until the Trustee is secured in the performance thereof; provided, however, that in no event shall any such postponement in any way affect the right of the Surviving Settlor to receive the income from any trust, quarterannually or at more frequent intervals, or to exercise any general testamentary power of appointment conferred on the Surviving Spouse.

9. Upon the death of The Surviving Settlor, the Successor Trustees named herein shall add any portion of the Survivor's Trust, Marital Trust and Contingency Trust not disposed of, appointed or devised to the Residual Trust which shall then be held, administered, divided and distributed as further provided herein.

(a) Unless sooner terminated as elsewhere provided herein, the Trustees shall hold the Residual Trust in Trust for a period not exceeding twenty-one (21) years less one day after the death of the last surviving member of that certain class composed of the blood relatives of NEVADA LEWIS living at the date of death of NEVADA LEWIS, Settlor herein. During the continuance of the Trust, the Trustees shall determine and make such distributions of income and principal as the Trustees shall by unanimous agreement determine according to the following standards:

(1) Distributions may only be made to members of that class composed of NEVADA LEWIS' living blood relatives, without requirement of equality of treatment. In this regard, the living relatives of NEVADA LEWIS as of the date of execution of this Trust consist of her brothers, her sisters, her half-brothers, and the issue of her brothers, sisters, and half-brothers. The Trustees may distribute so much of the income and/or principal of the Trust Estate to any member or members of said class as the Trustees shall determine to be necessary for the health, education and support of any member of said class. Any

income not distributed within a calendar year shall be accumulated and added to principal.

(2) The unanimous agreement of all of the Trustees then serving shall be required to make distributions of income and/or principal hereunder. Moreover, in the event of any distribution to a Trustee who is the member of the class of eligible beneficiaries, that Trustee shall have no vote in the decision, and the remaining Trustees shall be solely responsible for making same on a unanimous basis.

(3) At any time, the Trustees may make lump sum distributions of principal to any member or members of the eligible class of beneficiaries, provided that any lump sum distribution to a member of the class who is also a Trustee of the Trust shall be governed by the provisions of the paragraph immediately set forth above, and said Trustee shall take no part in the decision to distribute principal to himself. In any event, the power to distribute lump sums of principal shall be limited solely to distributions among the members of said class and in any event no Trustee may receive more than one-third (1/3) of the total value of the Trust Estate in the aggregate, excluding distributions of income which shall be governed by the standards set forth above.

(4) In the event a portion of the Trust Estate is included in the taxable estate of a deceased Trustee by virtue of the powers set forth herein, and to the extent that some percentage of the Trust Estate is included which exceeds the actual amount distributed to said Trustee hereunder, then any tax imposed on said deceased Trustee's estate on such excess amount shall be paid by the Trustees hereunder upon demand of the representatives of the estate of said deceased Trustee.

5. The Trustees are further authorized to pay any generation-skipping tax which may be imposed on the Trust Estate by virtue of its provisions.

(b) At any time, and by unanimous agreement, the Trustees may elect to terminate this Trust and distribute its assets to and among the members of the eligible class of beneficiaries described above, subject to the limitations and restrictions set forth above.

(c) In any event, twenty-one (21) years less one day after the death of the last surviving blood relative of NEVADA LEWIS living upon the date of her death, the Trust shall terminate and be distributed equally to the members of that certain class composed of the then living issue of ALEC OSTROM, HOMER OSTROM and FREDERICK OSTROM. Each member of said class shall be treated equally and the division and distribution among said members shall be per capita.

10. Any distribution to be made hereunder shall be made within ninety (90) days of the event requiring distribution and directly to the person for whom distribution is intended, or, if they are incompetent or disabled, then to the person or institution caring for them.

11. (a) After paying the expenses of termination and making final distribution of Trust assets, the Trustees shall be released from their obligations, save for a final accounting.

(b) During the lifetime of either Settlor, the Trustees shall account only to the Settlers or the survivor, and their written approval shall be final and conclusive in respect to transactions disclosed in the account as to all beneficiaries of the trust, including unborn and contingent beneficiaries. After the deaths of both Settlers, the Trustees shall, in addition to any accounting required under Section 1138.1 of the California Probate Code, render an accounting, from time to time, but not less frequently than every two (2) years after any prior accounting, regarding the transactions of any trust created in this instrument. Accounting shall also be rendered by any Trustee within twenty (20) days after his resignation or removal by a Court of competent jurisdiction.

Accountings shall be made by delivering a written accounting to each beneficiary entitled to current income distribution or, if there are no current beneficiaries, to each beneficiary entitled to current distribution out of income or principal in the Trustee's discretion, and to each remainderman in being. If any person entitled to receive an accounting is a minor or is under a disability, the accounting shall be delivered to his parents or the guardian of his person if he is a minor or to the guardian or conservator of his person if he is under any other disability. Unless any beneficiary, including parents, guardians, or conservators of beneficiaries, shall deliver a written objection to the Trustee within sixty (60) days after receipt of the Trustee's account, the account shall be final and conclusive in respect to transactions disclosed in the account as to all beneficiaries of the trust, including unborn and unascertained beneficiaries. After settlement of the account by agreement of the parties' objection to it, or by expiration of the sixty (60) day period, the Trustee shall no longer be liable to any beneficiary of the trust, including unborn and unascertained beneficiaries, in respect to transactions disclosed in the account, except for the Trustee's intentional wrongdoing or fraud.

12. During the joint lifetimes of the Settlers, this trust may be revoked in whole or in part with respect to community property by an instrument in writing signed by either or both Settlers, and with respect to separate property by an instrument in writing signed by the Settlor who contributed that property to the trust. On revocation, the Trustee shall promptly deliver to Settlers all of the designated portion of the community property trust assets, which shall continue to be the community property of the Settlers and which shall be held and administered as community property by them. On revocation with respect to separate property, the Trustees shall promptly deliver to the contributing Settlor all of the designated portion of that property. If this instrument is revoked with respect to all or a major portion of the assets subject to the instrument, the Trustee shall be entitled to retain sufficient assets reasonably to secure payment of liabilities lawfully incurred by the Trustee in the administration of the trust, including Trustee's fees that

have been earned, unless the Settlers shall indemnify the Trustee against loss or expense.

13. The Settlers may at any time during their joint lifetimes amend any of the terms of this instrument by an instrument in writing signed by both Settlers.

14. On the death of the Deceased Spouse, the Surviving Spouse shall have the power to amend, revoke, or terminate the Survivor's Trust, but the Residual Trust, Marital Trust and Contingency Trust may not be amended or revoked. On the death of the Surviving Spouse, no trust may be amended or revoked. On revocation or termination of the Survivor's Trust, all its assets shall be delivered to the Surviving Spouse.

Revocation and amendment shall be made in the manner provided in Paragraph 12.

15. The powers of the Settlers to revoke or amend this instrument are personal to them and shall not be exercisable in their behalf by any guardian, conservator, or other person, except that revocation or amendment may be authorized, after notice to the Trustee, by the court that appointed the guardian or conservator.

16. In order to carry out the provisions of the trusts created by this instrument, the Trustee shall have these powers in addition to those now or hereafter conferred by law:

(a) To invest and reinvest funds in every kind of property, real, personal, or mixed, and every kind of investment, specifically including but not limited to, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, mutual funds, mortgage participations, and life insurance policies on the life of any beneficiary except the beneficiary of a marital deduction trust, that men of prudence, discretion, and intelligence acquire, or would acquire for their own account as trust fiduciaries.

(b) To continue to hold any property and to operate at the risk of the trust estate any business that the Trustees receive or acquire under the trust as long as the Trustees deem advisable.

(c) To have all the rights, powers, and privileges of an owner with respect to the securities held in trust, including, but not limited to, the powers to vote, give proxies, and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustees may deem advisable; and to exercise or sell stock subscription or conversion rights.

(d) To manage, control, grant options on, sell (for cash or on



deferred payments), convey, exchange, partition, divide, improve and repair trust property.

(e) To lease trust property for terms within or beyond the term of the trust for any purpose, including exploration for and removal of gas, oil, and other materials; and to enter into community oil leases, pooling, and unitization agreements; To allocate the income tax benefits and burdens arising from capital gains and losses on trust property to the current income beneficiaries of the trust, pro-rata, as permitted by California and Federal tax laws, or to apportion same between the trust and said beneficiaries in order to obtain the greatest tax benefit from such gains and losses, provided, however, that the Surviving Spouse acting as Trustee shall not have the sole authority to make any such allocations or apportionments with respect to the gains and losses of the Residual or Marital Trusts; rather, the Surviving Spouse shall obtain the determination of a court of competent jurisdiction that the proposed allocations and apportionment of gains and losses of the Residual and Marital Trusts are equitable to both the current income beneficiaries and remaindermen of said Trusts, and that the proposed exercise of this power is not equivalent to a general power of appointment over the assets of the Residual or Marital Trusts. In lieu of obtaining a judicial determination, the Surviving Spouse may designate a neutral, non-subservient, unrelated individual or entity to make such determinations. Notwithstanding the foregoing, and during the joint lifetimes of the Settlor, all income, gain, or loss of the Trust shall be allocated to the Settlor to be reported on their individual State and Federal income tax returns. Likewise, during the lifetime of the Surviving Spouse, all of the income, gain, or loss of the Survivor's Trust shall be allocated to the Surviving Spouse to be reported on the Surviving Spouse's individual State and Federal income tax returns. The foregoing provision shall only apply to allocations of income and principal not otherwise provided under the Revised California Income and Principal Act from time to time existing.

(f) To lend money to any person, including the probate estate of either Settlor, provided that any such loan shall be adequately secured and shall bear a current commercial rate of interest for similar loans.

(g) To purchase property at its fair market value from the probate estate of either Settlor.

(h) To loan or advance the Trustee's own funds to the trust for any trust purpose, with interest at current commercial rates; to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of the trust; to borrow money from the trust on the condition that any such loan bear a current commercial rate of interest and be properly secured; to purchase assets of the trust at their fair market value as determined by an independent appraisal of those assets; and to sell property to the trust at a price not in excess of its fair market value as determined by an independent appraisal.

(i) In all cases hereunder, the Trustee's powers shall be subject to the Trustee's duty to treat income beneficiaries and remaindermen equitably; under no circumstance may the Surviving Spouse acting as Trustee exercise the Trustee's powers in a fashion which would give the Surviving Spouse the equivalent of a general power of appointment over the assets of the Residual or Marital Trusts. The following requirements shall be observed by the Trustee:

(1) A reasonable reserve for depreciation of all income-producing depreciable real and personal property, and capital improvements and extraordinary repairs on incomeproducing property, shall be charged to income from time to time;

(2) A reasonable reserve for depletion of all depletable natural resources, including, but not limited to, oil, gas, and mineral and timber property, shall be charged to income from time to time;

(3) Distributions by mutual funds and similar entities of gains from the sale or other disposition of property shall be credited to principal;

(4) A reasonable reserve for amortization to all intangible property having a limited economic life including, but not limited to, patents and copyrights, shall be charged to income from time to time;

(5) All premiums paid and discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income as the case may be;

(j) To borrow money, and to encumber trust property by mortgage, deed of trust, pledge or otherwise.

(k) To commence or defend, at the expense of the trust, such litigation with respect to the trust or any property of the trust or any property of the trust estate as the Trustee may deem advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of the trust.

(l) To carry insurance of such kinds and in such amounts as the Trustee deems advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of the trust estate and the Trustee personally against any hazard.

(m) To withhold from distribution, in the Trustee's discretion, at the time for distribution of any property in this trust, without the payment of interest, all or any part of the property, as long as the Trustee shall determine in the Trustee's discretion that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the estate. Notwithstanding the foregoing, the Surviving Spouse acting as Trustee shall first obtain a judicial

declaration directing the withholding of property subject to conflicting claims before withholding any such property.

(n) To partition, allot, and distribute the trust estate, on any division or partial or final distribution of the trust estate, in undivided interests or in kind, or partly in money and partly in kind, at current market valuations obtained by the Trustee, and to sell such property as the Trustee may deem necessary to make division or distribution. In making any division or partial or final distribution of the trust estate, the Trustee shall be under no obligation to make a pro-rata division, or to distribute the same assets to beneficiaries similarly situated; but rather, the Trustee may, in the Trustee's discretion, make a non-pro-rata division between trusts or shares and non-pro-rata distributions to separate trusts or shares, or non-pro-rata distributions to individual beneficiaries, provided, however, that any and all such nonpro-rata divisions and distributions of particular assets must have equivalent or proportionate fair market value as if a pro-rata distribution of same had instead been made. Notwithstanding the foregoing, all interests in mineral rights and natural resources shall be distributed pro-rata.

(o) To trade on margin with regard to any stocks or bonds purchased, held or sold by the trust and to borrow against any property held in the trust and to pledge same as collateral for the purpose of buying or selling trust assets; to open and maintain a margin account or accounts with recognized stock brokerage firms, and to pay interest charges that may accrue as a result of margin trading.

(p) Unless no other funds are available, the Trustee is explicitly prohibited from using life insurance proceeds, or the proceeds from qualified pension and/or profit sharing plans to pay federal estate or gift taxes, or State inheritance taxes.

17. There need be no physical segregation or division of the various trusts except as segregation or division may be required by the termination of any of the trusts, but the Trustee shall keep separate accounts for the different undivided interests.

18. Except as otherwise specifically provided in this instrument, or in the Will of a Settlor, federal and California estate taxes imposed on the trust estate by reason of the death of either or both Settlers and the inclusion of any portion of the trust estate in the gross Federal or California taxable estate of either Settlor under the provisions of any Federal or California tax law shall, to the extent paid by the Trustees, be paid and charged as a general expense of the particular trust estate included in the deceased Settlor's gross taxable estate, rather than charging same to individual beneficiaries or shares of the trust estate.

19. Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the

provisions of the California Revised Uniform Principal and Income Act from time to time existing.

20. Among successive beneficiaries of this trust, all taxes and other current expenses shall be deemed to have been paid and charged to the period in which they were paid.

21. Income accrued or unpaid on trust property when received into the trust shall be treated as any other income. Income accrued or held undistributed by the Trustee at the termination of any trust created here shall go to the next beneficiaries of the trust in proportion to their interest in it.

22. Unless the Trustee shall have received actual written notice of the occurrence of an event affecting the beneficial interests of this trust, the Trustee shall not be liable to any beneficiary of this trust for distribution made as though the event had not occurred.

23. Other property acceptable to the Trustee may be added to these trusts by any person, by the Will or Codicil or either Settlor, by the proceeds of any life insurance, or otherwise.

24. Unless sooner terminated in accordance with other provisions of this instrument, all trusts created under this instrument shall terminate twenty-one (21) years after the death of the last survivor of the Settlers or of the Settlers' issue living on the date of the death of the first Settlor to die. The principal and undistributed income of a terminated trust shall be distributed to the then income beneficiaries of that trust in the same portion that the beneficiaries are entitled to receive income when the trust terminates. If at the time of such termination the rights to income are not fixed by the terms of the trust, distribution under this clause shall be made, by right of representation, to the persons who are entitled or authorized, in the Trustee's discretion, to receive trust payments.

25. No interest in the principal or income of any trust created under this instrument shall be anticipated, assigned, encumbered, or subjected to creditor's claim or legal process before actual receipt by the beneficiary. This paragraph shall not apply to Settlers themselves while both alive, or any interest of a Settlor which is still revocable by that Settlor while only one Settlor is alive.

26. The validity of this trust and the construction of its beneficial provisions shall be governed by the laws of the State of California in force from time to time. This paragraph shall apply regardless of any change of residence of the Trustee or any beneficiary, or the appointment or substitution of a Trustee residing or doing business in another state.

27. The Trustee is hereby authorized to apply to a Court of competent jurisdiction for the appointment of a legal guardian for the person and estate of any beneficiary hereunder in the event said

beneficiary is unable to care for themselves and no other guardian has been appointed. Payments due hereunder to said beneficiary may be made to the guardian of same or to an institution or other medical facility caring for said beneficiary.

28 The Trustee is authorized to abandon any property or interest in property belonging to the trust when, in the Trustee's discretion, such abandonment is in the best interest of the trust and its beneficiaries.

29. The Successor Trustee herein named shall be compensated at said Trustee's then prevailing rate for administering trusts of the same size, kind and character as created hereunder and as this Trust is then constituted. If the Successor Trustee does not have a common or prevailing rate then compensation shall be based upon the reasonable value of services rendered.

30. If any provision of this trust instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

31. In the event any beneficiary under this trust shall, singly or in conjunction with any other person or persons, contest in any court the validity of this trust or of a deceased Settlor's last Will or shall seek to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that such Will or any of its provisions is void, or seek otherwise to void, nullify, or set aside this trust or any of its provisions, then the right of that person to take any interest given to him by this trust shall be determined as it would have been determined had the person predeceased the execution of this Declaration of Trust without surviving issue.

The Trustee is hereby authorized to defend, at the expense of the trust estate, any contest or other attack of any nature on this trust or any of its provisions.

32. If RICHARD R. LEWIS and NEVADA LEWIS shall for any reason both fail to qualify or cease to act as Trustee, then ALEC OSTROM, HOMER OSTROM and FREDERICK OSTROM shall serve as Co-Trustees or, if either of them shall be unable or unwilling to serve as Co-Trustee, then the others shall serve as Co-Trustees, until termination of this trust or any trusts created herein.

Notwithstanding the last preceding paragraph, during the Settlor's lifetime, and thereafter, and each person designated or acting from time to time as a Trustee of any trust established by this instrument shall have the power to designate successor Trustees to act when he or she shall become unable or unwilling to act as Trustee of the trust. Each person may designate the same or different persons or entities, including corporate fiduciaries; said Trustee to act as successor Trustee of the trust. If all individuals appointed as Trustee and any successors designated by them shall be unable or unwilling to act as Trustee, IKE OSTROM, SIG OSTROM and WILLIAM L. OSTROM shall act as Co-Trustees of the trust. If either of them shall be unable or unwilling to serve as

Co-Trustee, then the others shall serve as Co-Trustees, until termination of this trust or any trusts created herein. Any person acting as Trustee of any trust may from time to time revoke any designation of any successor to himself (whether that designation shall have been made by him or by his antecedent in interest), and that person may designate other persons or entities, or one or more of the same persons or entities, or all the same persons or entities previously designated in a different order, as successor Trustee to him.

All such designations or revocations shall be exercised by delivery to the beneficiaries of the trust for which they are designated.

33. No bond shall be required of any person named in this instrument as Trustee, or of any person appointed as the Trustee in the manner specified here, for the faithful performance of his duties as Trustee.

34. Where it is provided in this Declaration that a beneficiary hereunder must survive in order to receive his or her share, such beneficiary will be deemed to have predeceased Settlers unless he or she survived Settlers for a period of ninety (90) days, with the exception of Settlers themselves.

35. The trust created in this instrument may be referred to collectively as the OSTROM FAMILY TRUST and any separate trust created in this instrument may be referred to by adding the name of the beneficiary.

EXECUTED AT DOWNIEVILLE, California on JANUARY 25, 1983. <sup>4/17/83</sup>

We certify that we have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed and distributed, and with our approval, we request that the Trustee(s) execute this Declaration of Trust.

SETTLORS

Richard R. Lewis  
RICHARD R. LEWIS

Nevada Lewis  
NEVADA LEWIS

TRUSTEES

Richard R. Lewis  
RICHARD R. LEWIS

Nevada Lewis  
NEVADA LEWIS

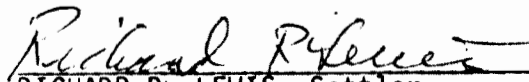
WITNESSES

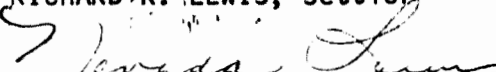
Frances Baker residing at Box 225

Gordon E. Tucker residing at Downieville, CA. 95936  
Downieville, CA. 95936

SCHEDULE "A"

1. All real property owned by Settlers at the time of creation of this Trust and hereafter acquired whether transferred hereto by deed or not, including Settlers' current residence.
2. All personal property owned by Settlers, including all furnishings, furniture, silverware, jewelry, and the like, now owned or to be owned by Settlers.
3. All bank accounts in Settlers' name or in Trust name and the contents thereof now or to be funded by Settlers.
4. Any and all business interests, corporations, partnerships, whether limited or general, and the like, owned by either Settlor or in which either Settlor participates whether transferred hereto or not by assignment or otherwise.
5. All stocks, bonds, securities, and the like, whether common or preferred, or otherwise now owned or to be acquired by Settlers whether transferred to the Trust or not.
6. All accounts receivable and notes payable and all trust deeds securing any such note.
7. All interest in and to R. R. LEWIS SAND & GRAVEL, a sole proprietorship.
8. All interest in and to R. R. LEWIS SMALL WATER CO., a sole proprietorship.
9. All interest in and to that portion owned of TSCHOPPS MUTUAL WATER CO.

  
\_\_\_\_\_  
RICHARD R. LEWIS, Settlor

  
\_\_\_\_\_  
NEVADA LEWIS, Settlor

State of California )

County of Sierra )

:ss.

On Jan 25, 198<sup>4</sup>, before me, the undersigned, a Notary Public in and for the State aforesaid, personally appeared RICHARD R. LEWIS known to me to be the person whose name is subscribed to the within instrument, who declared to me that he executed the instrument for the purposes therein set forth.

Frances Baker

Notary Public

FRANCES BAKER



State of California )

County of Sierra )

:ss.

On Jan 25, 198<sup>4</sup>, before me, the undersigned, a Notary Public in and for the State aforesaid, personally appeared NEVADA LEWIS known to me to be the person whose name is subscribed to the within instrument, who declared to me that she executed the instrument for the purposes therein set forth.

Frances Baker

Notary Public

FRANCES BAKER



LEWIS FAMILY TRUST

Page No. 17



LAW OFFICES OF  
**BALFREY & ABBOTT**

1801 I Street, Suite 200  
Sacramento, California 95814  
(916) 447-8899

Steven John Balfrey  
William W. Abbott  
Brigit S. Barnes  
James Harnish  
Howard W. Shook  
Marian E. Moe

March 2, 1988

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Bay Area Office:  
Webster Street Tower  
2101 Webster St., Suite 1700  
Oakland, California 94612  
(415) 268-1527

☐ If this box is checked,  
please reply to Oakland  
address.

CONFIDENTIAL

Supervisor Nevada Lewis  
P. O. Box 35  
Sierra City, CA 96125

RE: Conflict of Interest

Dear Supervisor Lewis:

Attached is a memorandum prepared by my office in which we have attempted to outline the matter of the conflict of interest question. As indicated in the attachment, the trust does not adequately insulate you from the conflict of interest requirements. Therefore, any county action affecting the assets of the trust, the water company, the real estate, etc., is subject to analysis for how it may run afoul of the conflict of interest laws.

It is impossible to anticipate every possible situation, so my goal is to highlight generally how a situation of potential conflict may occur. Based upon the examples discussed in the memo, I believe that a conflict issue could arise out of County actions affecting the water company's water source, rezoning of lands surrounding the subdivision, the moratorium on hookups, consideration of the tax issues, subdivision improvements, etc. As you can see, the range of potential issues is quite broad. As I would advise any other Board member, it is incumbent that you closely monitor County actions, and at the first moment you suspect that conflict may occur, contact the County Counsel's

Office or the FPPC. You should try and allow 10 days for my office to respond and 21 days for the FPPC.

Sincerely,

A handwritten signature in cursive script, appearing to read "William W. Abbott".

William W. Abbott

WA/mm

Attachment

(SIERRA/WA/MM/LEWIS.01/#2)

TO: File

FROM: Jim Falcone

RE: Sierra County -- Lewis Conflict of Interest

Facts:

Supervisor Lewis is a beneficiary of the Lewis Family Trust (hereinafter referred to as "Trust"). In the April 1, 1987, opinion by Daniel Smith for this office, the Trust was determined not to be a blind trust for purposes of 2 Cal.Admin. Code §18235. The assets of the Trust include the R.R. Lewis Small Water Co., Lewis Ranch Estates, consisting of unsold lots plus notes and deeds of trust on sold lots; and miscellaneous equipment.

Discussion:

Conflict of interest opinions normally require specific fact settings against which the applicable standards may be applied. However, this memo, which lacks such a setting, is instead intended to generally outline how conflicts may arise in Supervisor Lewis' case.

Supervisor Lewis is a public official (Gov. Code §82048). She may not make, participate in, or in any way influence a government decision that would have a reasonably foreseeable material financial effect, distinguishable from that on the public generally, on her economic interests (§§87100, 87103).

1. Economic Interest

Government Code §87103 states when an official has a financial interest in a decision:

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in

the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."

(Gov. Code §87103.)

As the last paragraph of the above section points out, Ms. Lewis' 10-percent or greater interest in the Trust constitutes an indirect investment or interest in any investment or interest owned by the Trust. Hence, for conflict of interest purposes, the interests of the Trust are the interests of Supervisor Lewis, including the water company and the real property interests of Lewis Ranch Estates.

## 2. Material Financial Effect

### a. Thresholds

The Fair Political Practices Commission (FPPC) has set out, at 2 C.A.C.<sup>1</sup> §§18702 and 18702.2 (attached), specific dollar thresholds as factors to be considered in determining whether it is reasonably foreseeable that a decision will have a significant and, therefore, material effect. These regulations cover a variety of effects. For example, in the case of an interest in real property, the effects considered are an increase or decrease in income producing potential or fair market value (2 C.A.C. §18702(b)(2)). In the case of a

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<sup>1</sup> C.A.C. refers to the California Administrative Code.

business entity, the effects considered are an increase or decrease in gross revenue or value of assets or liabilities, or incurring or avoiding additional expenses or reducing existing expenses (2 C.A.C. §18702(g)).

b. Disqualification

The FPPC has formulated several situations which it considers expressly material and requiring disqualification at 2 C.A.C. §18702.1. For example, an effect of \$250 or more on the assets or out of pocket expenses of the official or of his or her spouse or dependent children is material. If the decision would affect the zoning, annexation, sale, lease, actual or permitted use of, or taxes or fees imposed on real property in which the official has an interest of \$1,000 or more (e.g., Lewis Ranch Estates unsold lots and deeds of trust and sold lots) it is material. Further details and additional situations are located at 2 C.A.C. §18702.1. Notwithstanding the above, the section provides at subsection (c) that an official does not have to disqualify himself from a decision if the effect of the decision of the official, or the business entity in which the official is an officer or has an investment, will not be distinguishable from its effect on the public generally.

3. Examples

Given the above broad statutory constraints on public officials, the following are a few examples of conflict situations taken from the opinions of the FPPC and California Appellate Courts. Though not an exhaustive listing, these opinion summaries show some examples of how conflicts may arise.

- a. Directors of a municipal water district who hold significant interest in business entities which may be affected by the district's decisions on request for variances and the lifting of a moratorium on new water connections must disqualify themselves when the decisions will have a foreseeable material financial effect, distinguishable from their effect on the public generally, on the directors' interest. (Dec. 4, 1975) 1 FPPC 198.
- b. A public official who has a 50 percent equity interest in a parcel of property which is leased to a utility company must disqualify herself from participating in the assessment of the parcel of property in which she has the interest, and she must

also disqualify herself from participating in the assessment of other property owned by the company.

2 FPPC 157.

- c. A mayor who has multiple financial interests located directly across the street from the site of a proposed housing project, including interests in real property, investments and sources of income, must disqualify himself from making, participating in the making or in any way attempting to use his official position to influence decisions related to the proposed project because it is reasonably foreseeable that decisions related to the proposed project would have a material financial effect, distinguishable from their effect on the public generally, on some or all of the mayor's interests. 3 FPPC 38.
- d. A mayor who owns stock in a gas and electric company may not participate in decisions relating to the company. The mayor is prohibited from participating in decisions and from chairing meetings during consideration of such matters. 1 FPPC 54.
- e. Where a city councilman, who was directly employed by nonprofit corporation, participated actively in corporation's decision to buy properties, and as member of redevelopment agency he would participate directly in decisions on redevelopment of shopping center near corporation's properties, fact that any increase in value of property resulting from redevelopment agency's decisions would accrue to corporation or trustee of trust through which properties were purchased did not make councilman's financial interest too remote within Political Reform Act, §§87100 et seq., precluding public official from participating in making governmental decisions in which he has financial interest. Witt v. Morrow (1977) 139 Cal.Rptr. 161, 70 C.A.3d 817.
- f. A violation of the conflict of interest laws occurs not only when official participates in a decision in which he has a financial interest, but when he influences such decision, directly or indirectly; thus, a public official outside the immediate hierarchy of the decision-making agency may violate conflict of interest laws if he uses his official authority to influence the agency's decisions. Conflict of interest laws operate without regard to actual corruption or actual governmental loss; they establish an objective standard directed not only at dishonor, but also at conduct that tempts dishonor; they are preventative, acting upon tendencies as well as prohibited results. Commission on California State Government Organization

and Economy v. Fair Political Practices Commission  
(1977) 142 Cal.Rptr. 468, 75 C.A.3d 716.

(SIERRA/JF/MM/CONFLICT.07/#2)

**TITLE 2 FAIR POLITICAL PRACTICES COMMISSION**  
(Register 87, No. 26—6-27-87)

2 C. H. C.  
**§ 18702**  
(p. 328.3)

(2) Describe with particularity the nature of the financial interest before he or she makes or participates in making the decision;

(3) Attempt in no way to use his or her official position to influence any other public official with respect to the matter;

(4) State the reason there is no alternative source of decision-making authority;

(5) Participate in making the decision only to the extent that such participation is legally required.

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under Government Code Section 87100, to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code Section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code Section 87100, whether or not such other members are actually present at the time of the disqualification.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87101, Government Code.

**HISTORY:**

1. New section filed 1-22-76; effective thirtieth day thereafter (Register 76, No. 4).

2. Amendment of subsection (c) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).

→ **18702. Material Financial Effect.**

(a) The financial effect of a governmental decision on an economic interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars (\$1,000) or more or in the case of a business entity in which the public official is a director, officer, partner, employee, trustee or holds any position of management, the business entity will be affected in a manner described in 2 Cal. Adm. Code Section 18702.2.

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or

2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

(3) Whether, in the case of a source of income, as defined in Government Code Section 87103(c), of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made:

(A) (Reserved)



§ 18702.1  
(p. 328.4)

FAIR POLITICAL PRACTICES COMMISSION

TITLE 2

(Register 87, No. 26—6-27-87)

(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or

(C) In the case of a source of income which is a business entity, the business entity will be affected in a manner described in 2 Cal. Adm. Code Section 18702.2; or

(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

(c) Subsections (a) and (b) of this section notwithstanding, the making or participation in the making of a governmental decision by a contract consultant or by a person retained to provide information, advice, recommendation or counsel has no material financial effect on a business entity or source of income in which such consultant or person retained is an officer, employee, sole proprietor or partner, if the only financial effects of the decision are the modification, perpetuation or renewal of the contractual or retainer agreement and/or the opportunity to bid competitively on a project or contract.

NOTE: Authority cited: Section 83112, Government Code. Reference: Section 87103, Government Code.

HISTORY:

1. New section filed 1-22-76; effective thirtieth day thereafter (Register 76, No. 4).
2. Amendment filed 3-19-76 as an emergency; effective upon filing. Certificate of Compliance included (Register 76, No. 12).
3. Amendment filed 12-20-78; effective thirtieth day thereafter (Register 78, No. 51).
4. Amendment of subsection (a) and (b) filed 7-3-79; effective thirtieth day thereafter (Register 79, No. 27).
5. Amendment of subsection (b) filed 4-28-82; effective thirtieth day thereafter (Register 82, No. 18).
6. Amendment filed 6-22-87; operative 7-22-87 (Register 87, No. 26).

18702.1. Disqualification.

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

TITLE 2

FAIR POLITICAL PR

(Register 88, No. 36—8-7-88)

(2) Any business entity in which the official has an interest of \$1,000 or more, or in which the official is a trustee, employee, or holds any position of authority, or is an official in connection with the decision;

(3) The decision concerns the zoning, sale, purchase or lease, actual or potential, from any city, county, district or other political entity, or fees assessed or imposed on, or any other financial interest in which the official has a direct or indirect interest) of \$1,000 or more;

(4) It is reasonably foreseeable that the liabilities of the official or his or her spouse or dependent child will be decreased by at least \$250 by the decision.

(b) A person or business entity appears before the official in connection with a decision when that person or entity:

(1) Initiates the proceeding in which the official is involved, or application, claim, appeal, or similar proceeding;

(2) Is a named party in the proceeding, or is an officer or the body on which the official serves;

(c) Notwithstanding subsection (a), a person or business entity appearing for himself or herself from a governmental agency.

(1) The effect of the decision on the source of income (including gifts) to the official or his or her spouse or dependent child in which the official has an investment interest, or is an officer, partner, trustee, employee or holds any position of authority, or property in which the official has a direct or indirect interest, is distinguishable from its effect on the source of income.

(2) The decision only affects the source of income of the official or his or her spouse or dependent child, or demote, or discipline an official's spouse or dependent child, which is different from salaries paid to the official or his or her spouse in the same job classification or position.

(3) Although disqualification would apply to a person or business entity who appears before the official in connection with a decision:

(a) (1), (a) (2), or (a) (3) the decision is not a decision of a governmental agency.

NOTE: Authority cited: Section 83112, Government Code.

HISTORY:

1. New section filed 9-3-85; effective 10-1-85.

18702.2. Material Financial Effect of Decision.

(a) This section shall be used to measure the material financial effect (whether direct or indirect) of a decision on a person or business entity in which an official has an investment interest.

(b) An official has an economic interest in a decision if one or more of the following criteria are met:

(1) The business entity is a source of income to the official of \$250 or more provided to, received by, or expended by the official in the preceding 12 months.

(2) The official has a direct or indirect investment worth \$1,000 or more in the business entity.

(3) The official is a director, partner, employee, trustee of, or holds any position of management in, the business entity.

(c) The effect of a decision on any business entity listed on the New York Stock Exchange or the American Stock Exchange will be material if:

(1) The decision will result in an increase or decrease to the gross revenues for a fiscal year of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in gross revenues must be \$1,000,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$100,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in expenditures must be \$250,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 500 largest U.S. industrial corporations or the 500 largest U.S. non-industrial corporations, in which case the increase or decrease in assets or liabilities must be \$1,000,000 or more.

(d) The effect of a decision on any business entity listed on the National Association of Securities Dealers National Market List (securities of companies on this over-the-counter market list are registered with and subject to the Security and Exchange Commission's rule requiring tape reporting of last sale information [17 CFR Section 240.77 Aa3-1]) will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$150,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$50,000 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$150,000 or more.

(e) The effect of a decision on any business entity not covered by (c) or (d) but which is qualified for public sale in this state pursuant to Corporations Code Section 25110 (which applies to partnerships and other business entities as well as corporations), will be material if:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

(f) For businesses not covered by sub-division (d) may be applied. The entity has net tangible assets of at least \$2,500,000 in the last fiscal year of at least \$2,500,000.

For businesses not covered by (c) or (d) for listing on the National Association of List, the tests in subdivision (e) may be. The business entity has net tangible asset income for the last fiscal year of at least period of at least \$400,000.

(g) For business entities which are not individuals, the effect of a decision will be material if:

(1) The decision will result in an increase in the amount of revenue for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business incurring additional expenses or reducing or eliminating expenses of the amount of \$2,500 or more; or

(3) The decision will result in an increase in assets or liabilities of \$10,000 or more.

NOTE: Authority cited: Section 83112, Government Code.

### HISTORY:

1. New section filed 7-24-85; effective thirt
2. Repealer of subsection (h) filed 6-22-87;

Steven John Balfrey  
William W. Abbott  
Brigit S. Barnes  
Daniel W. Smith  
James Harnish  
Howard W. Shook

1210 G Street, Suite  
Sacramento, California 95811  
(916) 447-888

April 1, 1987

TO: Supervisor Nevada Lewis  
FROM: *DWS* Daniel W. Smith, for William W. Abbott,  
Special Counsel  
RE: Establishment of a Blind Trust

#### ISSUES PRESENTED

1. Does the Lewis Trust meet the standards for a blind trust as set forth in Title 2 of the California Administrative Code, Section 18235?
2. Does a conflict of interest exist due to Mrs. Lewis' interest in the trust if she participates in or votes on any matters relating to the property which constitutes the trust interests?

#### CONCLUSION

1. The Lewis Trust does not presently qualify as a blind trust. Although a disinterested person has been substituted for Mrs. Lewis as Trustee, the trust interests remain the same as they were prior to the substitution of Trustee.
2. A conflict of interest exists if Mrs. Lewis makes, participates in making, or uses her official position to influence a governmental decision in which she knows she has a financial interest.

#### FACTS

Richard R. Lewis and Nevada Lewis established the Lewis Family Trust, hereinafter referred to as "Trust," on January 25, 1986. Both parties were named as Trustees. The Trust consists of interests in real property, personal property, bank accounts and various business interests.

On January 5, 1987, in anticipation of being sworn in as a duly elected supervisor, Mrs. Lewis resigned as Trustee and appointed William L. Ostrom to act as Trustee.

## LEGAL DISCUSSION

### 1. Blind Trust

The conditions for establishment of a blind trust were promulgated by the Fair Political Practices Commission and set forth in Title 2 of the California Administrative Code, Section 18234. A blind trust must comply with the following conditions (Note: "filer" refers to a person filing a Statement of Economic Interests):

"(b) (1) the trustee must be a disinterested party other than the filer's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person;

(2) the trustee must be given complete discretion to manage the trust including, but not limited to, the power to dispose of and acquire trust assets without consulting or notifying the filer;

(3) the trustee must be required to notify the filer of the date of disposition and value at disposition of any original investments or interests in real property so that information can be reported on the filer's next Statement of Economic Interests;

(4) the trustee must be prohibited from disclosing to the filer any information concerning the replacement assets except for information required under this subsection or the minimum tax information which lists only the totals of taxable items from the trust and does not describe the source of any individual item of income; and

(5) if the trust is revoked while the filer is a public official, or if the filer learns of any replacement assets of the trust, the filer must file an amendment to the most recent Statement of Economic Interests disclosing the date of revocation and the previously unreported pro rata share of the trust's interests in real property or investments or income deriving from any such interests in real property or investments and disqualify himself or herself, as necessary. For purposes of this regulation, any replacement assets of which the filer learns shall thereafter be treated as though they were original assets of the trust."

(2 Cal. Admin. Code Section 18234(b).)

Once the filer has complied with the five steps listed in subsection (b) above, the trustee may begin acquiring interests or investments. The timing of trustee appointment and trust interest acquisition, which is critical to the establishment of a

qualifying blind trust, is addressed in Section 18234(c) as follows:

"(a) Notwithstanding the provisions of 2 Cal. Adm. Code Section 18234(c), a filer who has a direct, indirect or beneficial interest in a blind trust which meets the standards set forth in subsection (b) is not required to disclose the pro rata share of the trust's interests in real property or investments, or income deriving from any such interests or investments, if those interests or investments are acquired by the trustee after the trust complies with subsection (b).

However, nothing in this section relieves the filer from his or her obligation (1) to disclose the pro rata share of the trust's interests in real property or investments, or income deriving from any such interests or investments, if the interests or investments were originally transferred into the trust, and (2) to disqualify himself or herself from participating in decisions which may have a foreseeable and material effect on financial interests which are reportable under this regulation." (Emphasis added.)

Therefore, to qualify as a blind trust, the trust interests must be acquired after the appointment of the disinterested trustee and without the knowledge or participation of the former interested trustee. If the trust's interests are substantially the same both before and after the appointment of the disinterested trustee, the trust does not qualify as a blind trust and the filer, consequently, must disclose his/her share of the trust's interests and disqualify himself/herself from participating in decisions which may have a foreseeable and material financial effect on such financial interests.

If a filer has an interest in a blind trust which meets the requirements of subsection (b), the filer must indicate the existence of the blind trust, its date of creation and the name of the trustee on the Statement of Economic Interests and attach a copy of a statement signed by the trustee, under penalty of perjury, that he/she has not revealed any information to the filer, except what is required under subsections (b) (3) and (4), and that the trust is in conformance with subsection (b).

## 2. Conflict of Interest

### (a) Political Reform Act

The Political Reform Act, codified in Government Code Sections 81000-91015, prohibits any public official, at any level of state or local government, from making, participating in making, or using his official position to influence a governmental decision in which he knows he has a financial interest. (Gov. Code § 87100.) This section prohibits officials from making decisions which will affect their own pocketbooks.

In addition, Section 87103 defines which types of financial interests are prohibited:

"An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."

(Gov. Code § 87103.)

In one of its early opinions, the Fair Political Practices Commission ("FPPC") developed a test for applying Sections 87100 and 87103:

"Under the foregoing sections, several elements must be present before a public official is required to disqualify himself from participation in a governmental decision. First, it must be reasonably foreseeable that the governmental decision will have a financial effect. Second, the anticipated financial effect must be on a financial interest of the official, as defined in Sections 87103(a) through (d). Third, the anticipated financial effect must be material. And fourth, the governmental decision's anticipated financial effect on the official's financial interest must be distinguishable from its effect on the public generally." (Emphasis added.)

Pursuant to Section 83112, the FPFC has adopted a series of regulations to clarify the conflict of interest provisions of the Act. The regulations are found in Title 2 of the California Administrative Code, beginning with Section 18700. They contain specific parameters and guidelines which enable public officials to determine in advance whether a particular governmental decision made by the official will result in a conflict of interest.

(b) Optional Solutions to the Conflict Problem

Option 1: Ordinary Trust. According to the facts provided, the Trust consists of the same interests now as it did before the resignation of Mrs. Lewis as Trustee. Therefore, the Trust is not a "blind trust" as defined by 2 Cal. Adm. Code Section 18234(a) and, consequently, Mrs. Lewis must report the nature of each Trust interest or investment annually on the Statement of Economic Interests and disqualify herself from participating in decisions which affect those interests as discussed earlier. Since most of the Trust property is personal to the family (i.e., residence, jewelry, family-owned business), the option of leaving the Trust interests unchanged would be preferred, assuming that these assets are important to the Lewis family. Furthermore, if this option were exercised, nothing would bar the reappointment of Mrs. Lewis as Trustee.

Option 2: Blind Trust. If the ability to exercise the powers of her office without ever encountering a conflict of interest is more important to Mrs. Lewis than the composition of the Trust, then it will be necessary to liquidate the Trust holdings and allow the disinterested Trustee to reinvest the proceeds. Of course, Mrs. Lewis must remain completely unaware as to the nature of the property purchased with the reinvested proceeds. It is unlikely that Mrs. Lewis will encounter enough conflicts of interest to warrant such a drastic restructuring of the Trust.

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This memorandum has been prepared on the basis of documents provided to this office by William Ostrom and Nevada Lewis. The opinions and conclusions contained herein are based on the attached documents and applicable law.

Please call me if you have any questions with regard to this opinion, or if I can be of assistance on any other matter.

cc: William Ostrom  
Daniel Gallery

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